

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EULOGIA MORALES-CAYETANO, a
married woman,

Plaintiff,

vs.

CITY OF SEATTLE, Washington municipal
corporation; JOHN DIAZ and "JANE DOE"
DIAZ husband and wife, and the marital
community of them comprised; BRANDON
EGGERS and "JANE DOE" EGGERS,
husband and wife, and the marital community
of them comprised; LINDSAY C. BROWN
and "JOHN DOE" BROWN, husband and
wife, and the marital community of them
comprised; DAVID L. BAUER and "JANE
DOE" BAUER, husband and wife, and the
marital community of them comprised;

Defendants.

No. 13-CV-02187TSZ

DEFENDANTS' ANSWER TO THE
COMPLAINT AND AFFIRMATIVE
DEFENSES

JURY DEMAND

COME NOW defendants John Diaz, Brandon Eggers, Lindsay C. Brown, David L. Bauer, and
City of Seattle (hereinafter "defendants"), by and through their attorneys of record, Peter S. Holmes,
Seattle City Attorney, Christine L. Olson, Assistant City Attorney, and Brian G. Maxey, Assistant City

DEFENDANTS' ANSWER TO THE COMPLAINT AND AFFIRMATIVE
DEFENSES AND JURY DEMAND
(13-CV-02187TSZ) - 1

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1 Attorney, and hereby submit their Answer and Affirmative Defenses to Plaintiff's Complaint, and
2 allege as follows:

3 **I. PARTIES AND JURISDICTION**

4 1.1 Defendants lack sufficient knowledge to form a belief about the truth of the allegations
5 set forth in this paragraph and therefore deny the same at this time.

6 1.2 Defendants admit that Defendant City of Seattle is a municipal corporation, duly
7 organized and existing under the State of Washington.

8 1.3 Defendants admit that defendant John Diaz at all times relevant was Chief of the Seattle
9 Police Department. Defendants lack sufficient knowledge to form a belief about the truth of the
10 remaining allegations set forth in this paragraph and therefore deny the same at this time.

11 1.4 Defendants admit that defendant Brandon Eggers was a City of Seattle police officer
12 acting within the course and scope of his employment at all times relevant. Defendants lack sufficient
13 knowledge to form a belief about the truth of the remaining allegations set forth in this paragraph and
14 therefore deny the same at this time.

15 1.5 Defendants admit that defendant Lindsay Brown was a City of Seattle police officer
16 acting within the course and scope of his employment at all times relevant. Defendants lack sufficient
17 knowledge to form a belief about the truth of the remaining allegations set forth in this paragraph and
18 therefore deny the same at this time.

19 1.6 Defendants admit that defendant David Bauer was a City of Seattle police officer acting
20 within the course and scope of his employment at all times relevant. Defendants lack sufficient
21 knowledge to form a belief about the truth of the remaining allegations set forth in this paragraph and
22 therefore deny the same at this time.

23 1.7 Defendants deny the allegations of this paragraph.

1.8 Defendants lack sufficient knowledge to form a belief about the truth of the allegations set forth in this paragraph and therefore deny the same at this time.

1.9 Defendants admit that plaintiff's arrest occurred in King County, Washington, but deny the remaining allegations of this paragraph, including the suggestion that defendants committed acts giving rise to liability.

1.10 Defendants admit the allegations of this paragraph.

1.11 Defendants admit the allegations of this paragraph (but have removed this case to federal court).

II. FACTUAL BACKGROUND

2.1 Defendants lack sufficient knowledge to form a belief about the truth of the allegations set forth in this paragraph and therefore deny the same at this time.

2.3¹ Defendants lack sufficient knowledge to form a belief about the truth of the allegations set forth in this paragraph and therefore deny the same at this time.

2.4 Defendants lack sufficient knowledge to form a belief about the truth of the allegations set forth in this paragraph and therefore deny the same at this time.

2.5 Defendants admit that on or about November 4, 2010, defendant Brandon Eggers was dispatched to the Last Chance Chili Shack, which is near the Viking Bank, in response to a complaint regarding two male patrons. Defendants lack sufficient knowledge to form a belief about the truth of the remaining allegations set forth in this paragraph and therefore deny the same at this time.

2.6 Defendants admit that shortly before the dispatch, two males entered the Last Chance Chili Shack, and that the bartender reported to police that she spoke with the two men and asked them

¹ The Complaint omits section 2.2.

1 to leave, in part because they had brought beer in with them. Defendants deny that the two men left
2 the bar without incident. Defendants lack sufficient knowledge to form a belief about the truth of the
3 remaining allegations set forth in this paragraph and therefore deny the same at this time.

4 2.6² Defendants admit that the two men who had entered the Last Chance Chili Shack left
5 the Shack but remained in the vicinity of the Shack for a period of time. Defendants lack sufficient
6 knowledge to form a belief about the truth of the remaining allegations set forth in this paragraph and
7 therefore deny the same at this time.

8 2.7 Defendants lack sufficient knowledge to form a belief about the truth of the allegations
9 set forth in this paragraph and therefore deny the same at this time.

10 2.8 Defendants lack sufficient knowledge to form a belief about the truth of the allegations
11 set forth in this paragraph and therefore deny the same at this time.

12 2.9 Defendants admit that Officer Eggers contacted the occupants of a car which was
13 parked outside the Viking Bank. Defendants lack sufficient knowledge to form a belief about the truth
14 of the remaining allegations set forth in this paragraph and therefore deny the same at this time.

15 2.10 Defendants lack sufficient knowledge to form a belief about the truth of the allegations
16 set forth in this paragraph and therefore deny the same at this time.

17 2.11 Defendants admit that Officer Eggers asked the driver of the car for his driver's license
18 and ran a check of the license. Defendants admit that Officers David Bauer and Lindsay Brown were
19 also present for at least part of the incident in question. Defendants admit that at least one officer
20 repeatedly told the man in the back seat of the car to keep his hands on the back of the driver's seat.
21 Defendants lack sufficient knowledge to form a belief about the truth of the remaining allegations set
22 forth in this paragraph and therefore deny the same at this time.

23

² The Complaint lists two paragraphs 2.6

1 2.12 Defendants admit that the incident report states that Officer Bauer detained the man in
2 the back seat of the car after the man failed to keep his hands on the back of the driver's seat.
3 Defendants lack sufficient knowledge to form a belief about the truth of the remaining allegations set
4 forth in this paragraph and therefore deny the same at this time.

5 2.13 Defendants lack sufficient knowledge to form a belief about the truth of the allegations
6 set forth in this paragraph and therefore deny the same at this time.

7 2.14 Defendants lack sufficient knowledge to form a belief about the truth of the allegations
8 set forth in this paragraph and therefore deny the same at this time.

9 2.15 Defendants deny that Officers Brown and Bauer "reacted with force to Emmanuel's
10 verbal demands, and began beating, shoving, and grabbing him," as set forth in the Complaint.
11 Defendants lack sufficient knowledge to form a belief about the truth of the remaining allegations set
12 forth in this paragraph and therefore deny the same at this time.

13 2.19³ Defendants deny the allegations of this paragraph.

14 2.20 Defendants deny the allegations of this paragraph.

15 2.21 Defendants lack sufficient knowledge to form a belief about the truth of the allegations
16 set forth in this paragraph and therefore deny the same at this time.

17 2.22 Defendants lack sufficient knowledge to form a belief about the truth of the allegations
18 set forth in this paragraph and therefore deny the same at this time.

19 2.23 Defendants lack sufficient knowledge to form a belief about the truth of the allegations
20 set forth in this paragraph and therefore deny the same at this time.

21 2.24 Defendants lack sufficient knowledge to form a belief about the truth of the allegations
22 set forth in this paragraph and therefore deny the same at this time.

23

³ The Complaint lists section 2.19 after 2.15.

III. FIRST CAUSE OF ACTION: NEGLIGENCE

3.1 Defendants reallege and incorporate all proceeding paragraphs.

3.1⁴ The allegations in this paragraph state legal conclusions to which no answer is required, and defendants deny the allegations.

3.2 Defendants deny the allegations in this paragraph.

3.3 The allegations in this paragraph state legal conclusions to which no answer is required and defendants deny the allegations.

3.5⁵ The allegations in this paragraph state legal conclusions to which no answer is required, and defendants deny the allegations.

IV. SECOND CAUSE OF ACTION: STATUTORY VIOLATION OF CONSTITUTIONAL RIGHTS

4.1 Defendants reallege and incorporate all proceeding paragraphs.

4.2 The allegations in this paragraph state legal conclusions to which no answer is required, and defendants deny the allegations.

4.3 The allegations in this paragraph state legal conclusions to which no answer is required, and defendants deny the allegations.

4.4 The allegations in this paragraph state legal conclusions to which no answer is required, and defendants deny the allegations.

V. DAMAGES

5.1 Defendants reallege and incorporate all proceeding paragraphs.

Defendants deny all of the remaining allegations in section V. and deny that plaintiff is entitled to any damages or relief of any kind.

⁴ The Complaint lists section 3.1 twice.

⁵ The Complaint omits section 3.4.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief may be granted.

2. The City, a municipal corporation, is immune from liability for prejudgment interest on tort judgments and is immune from punitive damages.

3. The defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of Washington or any political subdivision thereof.

4. There was probable cause and/or reasonable suspicion for plaintiff's seizure.

5. Any force used against plaintiff was reasonable.

6. Any damages suffered by plaintiff were caused in whole or in part by her own conduct or fault.

7. Defendants cannot be liable under a negligence theory, in part because they did not owe plaintiff a duty of care. Even if they did, the duties and functions of the defendants entailed the reasonable exercise of proper and lawful discretion.

8. The police officer defendants are entitled to qualified immunity.

JURY TRIAL DEMAND

Defendants respectfully demand a trial by jury of all issues so triable.

WHEREFORE, defendants respectfully request that the Complaint be dismissed with prejudice, that they be awarded costs and reasonable attorneys' fees herein, and that they be granted such other and further relief as the Court finds just and equitable.

1 DATED this 13th day of December, 2013.

2 PETER S. HOLMES
3 Seattle City Attorney

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18 **CERTIFICATE OF FILING/SERVICE**

19 I, Donna M. Robinson, certify that on the 13th day of November, 2013, I electronically
20 filed this document with the Clerk of the Court using the CM/ECF system, which will send
21 notification of such filing to the following attorneys of record:

22 For Plaintiff:
23 Sergio Armijo, sergio@armijolawoffice.com

For Defendants:
Christine Olson, christine.olson@seattle.gov
Brian Maxey, brian.maxey@seattle.gov

DATED this 13th day of December, 2013.

21 
22 DONNA M. ROBINSON